

MEMO# 24691

November 8, 2010

Draft ICI Comment Letter on FDIC Orderly Liquidation Proposal; Comments Due to ICI by Nov. 15

[24691]

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TO: SEC RULES COMMITTEE No. 50-10
FIXED-INCOME ADVISORY COMMITTEE No. 26-10
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 58-10 RE: DRAFT ICI COMMENT LETTER
ON FDIC ORDERLY LIQUIDATION PROPOSAL; COMMENTS DUE TO ICI BY NOV. 15

As we previously informed you, [\[1\]](#) the FDIC has proposed a rule to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to orderly liquidation authority. [\[2\]](#) The rule is intended to provide greater clarity and certainty to the financial industry on certain key issues, and to ensure that the liquidation process reflects the Dodd-Frank Act's mandate of transparency. It addresses the treatment of similarly situated claimants; personal service agreements; claims based on contingent obligations; and insurance companies and their subsidiaries.

The ICI has prepared a draft comment letter, which is attached and summarized below.

Comments on the proposed rule are due no later than November 18, 2010. Please provide your comments to Mara Shreck by November 15, 2010 at 202/326-5923 or mshreck@ici.org.

Summary of Draft Letter

ICI's draft letter begins by applauding the FDIC for attempting to clearly define and circumscribe the situations in which similarly situated creditors may be treated differently during the liquidation of a covered financial company. It states that we believe the proposal to exclude long-term bondholders and certain other creditors from the categories of creditors who may receive additional payments substantially addresses our concerns regarding the authority granted by Title II of the Dodd-Frank Act.

The letter then addresses three main points. First, it recommends that the FDIC reconsider its proposal to value U.S. Treasury and agency securities used as collateral at par value. It explains that this treatment could actually create perverse incentives and other unintended

consequences. The letter next requests further clarification of the scope and mechanics of proposed §380.2(c), noting a number of ambiguities in the section. Finally, the letter requests clarification as to the status of obligations that are not “contingent obligations” under the definition provided in §380.4.

Mara Shreck
Associate Counsel

[Attachment \(in .pdf format\)](#)

endnotes

[1] See ICI Memorandum No. [24649](#), dated Oct. 25, 2010.

[2] Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 Fed. Reg. 64170 (Oct. 19, 2010), available at <http://www.fdic.gov/news/news/press/2010/pr10224a.pdf>.

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